

AMENDED IN SENATE APRIL 6, 2006

**SENATE BILL**

**No. 1522**

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**Introduced by Senator Aanestad**

February 23, 2006

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~~An act to amend Section 60101 of the Revenue and Taxation Code, relating to taxation. An act to amend Sections 60100, 60101, 60108, and 60501 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1522, as amended, Aanestad. ~~Sales and use tax: exemption: dyed diesel fuel. Diesel Fuel Tax Law: emergency services providers.~~

*The Diesel Fuel Tax Law impose, among other things, a specified backup tax in connection with each gallon of fuel sold and provide certain exemptions therefrom.*

*This bill would provide an exemption for local emergency service providers, and would make related and conforming changes.*

*This bill would take effect immediately as a tax levy.*

~~Under existing law, there is exempted from sale and use taxes, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, specially dyed or marked diesel fuel used in farming activities and food processing. Existing law prohibits the operation or maintenance on a public highway of a motor vehicle using dyed diesel fuel with exceptions, as provided.~~

~~This bill would add operators of emergency response vehicles to the list of exemptions for vehicles allowed to use dyed fuel on public highways.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 60100 of the Revenue and Taxation*  
2     *Code is amended to read:*

3     60100. (a) The provisions of this part requiring the payment  
4     of taxes do not apply to any of the following:

5     (1) The removal from a terminal or refinery of, or the entry or  
6     sale of, any diesel fuel if all of the following apply:

7     (A) The person otherwise liable for tax is a diesel fuel  
8     registrant.

9     (B) In the case of a removal from a terminal, the terminal is an  
10    approved terminal.

11    (C) The diesel fuel satisfies the dyeing and marking  
12    requirements of Section 60101.

13    (2) Any entry or removal from a terminal or refinery of  
14    taxable diesel fuel transferred in bulk to a refinery or terminal if  
15    the persons involved (including the terminal operator) are  
16    registered.

17    (3) The removal of diesel fuel if all of the following apply:

18    (A) The diesel fuel is removed by railroad car from an  
19    approved refinery and is received at an approved terminal.

20    (B) The refinery and the terminal are operated by the same  
21    diesel fuel registrant.

22    (C) The refinery is not served by pipeline (other than a  
23    pipeline for the receipt of crude oil) or vessel.

24    (4) Diesel fuel which, pursuant to the contract of sale, is  
25    required to be shipped and is shipped to a point outside of this  
26    state by a supplier by means of any of the following:

27    (A) Facilities operated by the supplier.

28    (B) Delivery by the supplier to a carrier, customs broker, or  
29    forwarding agent, whether hired by the purchaser or not, for  
30    shipment to the out-of-state point.

31    (C) Delivery by the supplier to any vessel clearing from a port  
32    of this state for a port outside of this state and actually exported  
33    from this state in the vessel.

34    (5) Backup tax does not apply to delivery of diesel fuel into  
35    the fuel tank of a diesel-powered highway vehicle as provided in  
36    Section 60058 for any of the following:

37    (A) Use on a farm for farming purposes.

38    (B) Use in an exempt bus operation.

1 (C) Use in a diesel-powered highway vehicle that is operated  
2 off the highway.

3 (D) Use in a diesel-powered highway vehicle that is owned  
4 and operated by a government entity.

5 (E) Use by the United States and its agencies and  
6 instrumentalities.

7 *(F) Use in a diesel-powered highway vehicle that is owned*  
8 *and operated by a local emergency service provider. For*  
9 *purposes of this paragraph, “local emergency service provider”*  
10 *means either of the following:*

11 *(i) A fire department maintained by a city or town, a fire*  
12 *company in an unincorporated town organized pursuant to*  
13 *Section 14825 of the Health and Safety Code, or a fire protection*  
14 *district formed pursuant to the Fire Protection District Law of*  
15 *1987.*

16 *(ii) A police department or a sheriff department maintained by*  
17 *a city, county, or city and county.*

18 (6) Diesel fuel sold by credit card certified by the United  
19 States Department of State to any consulate officer or consulate  
20 employee of a foreign government who is not engaged in any  
21 private occupation for gain within this state, who uses the diesel  
22 fuel in a motor vehicle which is registered with the United States  
23 Department of State, and whose government has done either of  
24 the following:

25 (A) Entered into a treaty with the United States providing for  
26 the exemption of its representatives from national, state, and  
27 municipal taxes.

28 (B) Granted a similar exemption to representatives of the  
29 United States.

30 (7) Diesel fuel sold by a supplier to a train operator for use in  
31 a diesel-powered train or for other off-highway use and the  
32 supplier has on hand an exemption certificate from the train  
33 operator.

34 (8) Diesel fuel sold by a supplier to the United States and its  
35 agencies and instrumentalities.

36 (b) For purposes of this section:

37 (1) “Carrier” means a person or firm engaged in the business  
38 of transporting for compensation property owned by other  
39 persons, and includes both common and contract carriers.

(2) “Forwarding agent” means a person or firm engaged in the business of preparing property for shipment or arranging for its shipment.

*SEC. 2. Section 60101 of the Revenue and Taxation Code is amended to read:*

60101. (a) Diesel fuel that is required to be dyed satisfies the dyeing requirement of this part if it meets the dyeing requirements of the United States Environmental Protection Agency and the Internal Revenue Service, including, but not limited to, requirements respecting type, dosage, and timing.

(b) Marking shall meet the marking requirements of the Internal Revenue Service.

(c) No person shall operate or maintain a motor vehicle on any public highway in this state with dyed diesel fuel in the fuel supply tank. This subdivision does not apply to uses of dyed diesel fuel on the highway that are lawful under the Internal Revenue Code or regulations promulgated thereunder, if the person is registered as a qualified highway vehicle operator, exempt bus operator, or government entity, or if the person is an intercity bus operator, as defined in Section 60046, who is registered as an interstate user under this part, *or if the person is a local emergency service provider.*

*SEC. 3. Section 60108 of the Revenue and Taxation Code is amended to read:*

60108. (a) Notwithstanding the exemption provided for in subparagraph (D) of paragraph (5) of subdivision (a) of Section 60100, any government entity using diesel fuel exempt from tax under subparagraph (D) of paragraph (5) of subdivision (a) of Section 60100 shall, for the privilege of operating diesel-powered highway vehicles on highways in this state, make a payment equal to the tax specified in Section 60050 for each gallon of exempt diesel fuel used. The payments required by this subdivision shall be paid to the State Board of Equalization in the manner prescribed by the board, and the payments shall be treated as a tax for all purposes of this part.

(b) *This section, Section 60146, and Section 60205.5 do not apply to a local emergency service provider, as defined in Section 60100.*

*SEC. 4. Section 60501 of the Revenue and Taxation Code is amended to read:*

60501. Persons who have paid a tax for diesel fuel lost, sold, or removed as provided in paragraph (4) of subdivision (a), or used in a nontaxable use, other than on a farm for farming purposes or in an exempt bus operation, shall, except as otherwise provided in this part, be reimbursed and repaid the amount of the tax.

(a) A claim for refund with respect to diesel fuel is allowed under this section only if all of the following apply:

(1) Tax was imposed on the diesel fuel to which the claim relates.

(2) The claimant bought or produced the diesel fuel and did not sell or resell it in this state except as provided in paragraph (4) of subdivision (a).

(3) The claimant has filed a timely claim for refund that contains the information required under subdivision (b) and the claim is supported by the original invoice or original invoice facsimile retained in an alternative storage media showing the purchase. If no original invoice was created, electronic invoicing shall be accepted as reflected by a computerized facsimile when accompanied by an original copy of the bill of lading or fuel manifest that can be directly tied to the electronic invoice.

(4) The diesel fuel was any of the following:

(A) Used for purposes other than operating motor vehicles upon the public highways of the state.

(B) Exported for use outside of this state. Diesel fuel carried from this state in the fuel tank of a motor vehicle is not deemed to be exported from this state unless the diesel fuel becomes subject to tax as an import under the laws of the destination state.

(C) Used in any construction equipment that is exempt from vehicle registration pursuant to the Vehicle Code, while operated within the confines and limits of a construction project.

(D) Used in the operation of a motor vehicle on any highway that is under the jurisdiction of the United States Department of Agriculture and with respect to the use of the highway the claimant pays, or contributes to, the cost of construction or maintenance thereof pursuant to an agreement with, or permission of, the United States Department of Agriculture.

(E) Used in any motor vehicle owned by any county, city and county, city, district, or other political subdivision or public agency when operated by it over any highway constructed and

1 maintained by the United States or any department or agency  
2 thereof within a military reservation in this state. If the motor  
3 vehicle is operated both over the highway and over a public  
4 highway outside the military reservation in a continuous trip the  
5 tax shall not be refunded as to that portion of the diesel fuel used  
6 to operate the vehicle over the public highway outside the  
7 military reservation.

8 Nothing contained in this section shall be construed as a refund  
9 of the tax for the use of diesel fuel in any motor vehicle operated  
10 upon a public highway within a military reservation, which  
11 highway is constructed or maintained by this state or any  
12 political subdivision thereof.

13 As used in this section, "military reservation" includes any  
14 establishment of the United States Government or any agency  
15 thereof used by the armed forces of the United States for  
16 military, air, or naval operations, including research projects.

17 (F) Sold by a supplier to any consulate officer or consulate  
18 employee under circumstances which would have entitled the  
19 supplier to an exemption under paragraph (6) of subdivision (a)  
20 of Section 60100 if the supplier had sold the diesel fuel directly  
21 to the consulate officer or consulate employee.

22 (G) Lost in the ordinary course of handling, transportation, or  
23 storage.

24 (H) Sold by a person to the United States and its agencies and  
25 instrumentalities under circumstances that would have entitled  
26 that person to an exemption from the payment of diesel fuel tax  
27 under Section 60100 had that person been the supplier of this  
28 diesel fuel.

29 (I) Sold by a person to a train operator for use in a  
30 diesel-powered train or for other off-highway use under  
31 circumstances that would have entitled that person to an  
32 exemption from the payment of diesel fuel tax under Section  
33 60100 had that person been the supplier of this diesel fuel.

34 (J) Removed from an approved terminal at the terminal rack,  
35 but only to the extent that the supplier can show that the tax on  
36 the same amount of diesel fuel has been paid more than one time  
37 by the same supplier.

38 (K) *Used in a diesel-powered highway vehicle owned or*  
39 *operated by a local emergency service provider, as defined in*  
40 *Section 60100.*

(b) Each claim for refund under this section shall contain the following information with respect to all of the diesel fuel covered by the claim:

(1) The name, address, telephone number, and permit number of the person that sold the diesel fuel to the claimant and the date of the purchase.

(2) A statement by the claimant that the diesel fuel covered by the claim did not contain visible evidence of dye.

(3) A statement, which may appear on the invoice, original invoice facsimile, or similar document, by the person that sold the diesel fuel to the claimant that the diesel fuel sold did not contain visible evidence of dye.

(4) The total amount of diesel fuel covered by the claim.

(5) The use made of the diesel fuel covered by the claim described by reference to specific categories listed in paragraph (4) of subdivision (a).

(6) If the diesel fuel covered by the claim was exported, a statement that the claimant has the proof of exportation.

(c) Each claim for refund under this section shall be made on a form prescribed by the board and shall be filed for a calendar year. If, at the close of any of the first three quarters of the calendar year, more than seven hundred fifty dollars (\$750) is refundable under this section with respect to diesel fuel used or exported during that quarter or any prior quarter during the calendar year, and for which no other claim has been filed, a claim may be filed for the quarterly period. To facilitate the administration of this section, the board may require the filing of claims for refund for other than yearly periods.

*SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.*

~~SECTION 1. Section 60101 of the Revenue and Taxation Code is amended to read:~~

~~60101. (a) Diesel fuel that is required to be dyed satisfies the dyeing requirement of this part if it meets the dyeing requirements of the United States Environmental Protection Agency and the Internal Revenue Service, including, but not limited to, requirements respecting type, dosage, and timing.~~

~~(b) Marking shall meet the marking requirements of the Internal Revenue Service.~~

1     ~~(e) No person shall operate or maintain a motor vehicle on any~~  
2     ~~public highway in this state with dyed diesel fuel in the fuel~~  
3     ~~supply tank. This subdivision does not apply to uses of dyed~~  
4     ~~diesel fuel on the highway that are lawful under the Internal~~  
5     ~~Revenue Code or regulations promulgated thereunder, if the~~  
6     ~~person is registered as a qualified highway vehicle operator,~~  
7     ~~operator of an emergency response vehicle, exempt bus operator,~~  
8     ~~or government entity, or if the person is an intercity bus operator,~~  
9     ~~as defined in Section 60046, who is registered as an interstate~~  
10    ~~user under this part.~~

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